

**OPINION
71-132**

July 2, 1971 (OPINION)

The Honorable Eugene A. Burdick

District Judge

Williston, ND

RE: Courts - Court Reporters - Salaries

This is in response to your letter in which you make reference to Section 27-06-02 which has been amended by House Bill 2096. You ask when this act will be effective and fully operative.

The question arises as a result of the following language:

"The presiding judge of each judicial district, on the first day of January of each year, or as soon thereafter as may be, shall apportion the amount of such salary to be paid by each county in his district on the basis aforesaid, and the county auditors of the respective counties in such judicial district shall issue to the order of such court reporter a warrant to the amount shown to be due by such apportionment."

Prior to the amendment by Senate Bill 2096 the salaries of the court reporters were apportioned among the counties on the basis of cases entered and commenced in the district court of the respective counties in the preceding year. House Bill 2096 changed the method of apportioning the salary of the court reporter from a per case basis to a per population basis.

We have examined the committee files with the hope that some light could be shed on the intent and purpose of the bill as to its implementation, but without success.

The quoted language above came into being by Chapter 30 of the 1919 Special Session. Prior to that time, no specific date was mentioned when the judge should make the apportionment.

It is significant to note that at that time the budgets by the judges and other officers were to be submitted by March 15, whereas now the budgets are to be submitted on or before July 6 of each year. (See Section 11-23-01.) In examining Section 27-06-02 and other related statutes, we are convinced that the report by the presiding judge of each judicial district is for the purpose of budgeting expenses. As to court reporters, it has a further purpose; namely, to set the apportionment of the reporter's salary.

In instances where a person is appointed or elected to an office, the law in effect at the time the election or appointment is made governs. The report required to be made by the presiding judge, however, does not have the status comparable to an office which has a fixed term. The date in which the report is to be made is flexible. It is to be made on the first day of January, "or as soon thereafter

as may be,* * *". The phrase "or as soon thereafter as may be" leaves much to be desired. It fixes no time limitation. Technically, this language says that it should be done on the first of January, but may be done any time thereafter. The implication is that it should be done sometime shortly after the first day of January, but there is no time specified when the report must be completed or filed. This leaves a great amount of discretion with the presiding judge.

The bill in question does not have an emergency clause and thus July 1 is its effective date.

In construing the provisions of Section 27-06-02 as amended, we must take into account procedures followed, purpose of the procedures and the dates, objectives and accomplishments. It is eminently clear that the Legislature wished to change the method of apportioning the salary of the court reporters from a per case basis to a per population basis. The only question remains: when can the new provisions be implemented? We are aware that the counties operate on a fiscal year from July 1 to July 1. We are also aware that the counties prepare the budgets sometime after July 6. The county commissioners are required to set the levy for county purposes on or before the fourth Tuesday in July of each year. This strongly suggests that the provisions of House Bill 2096 can be implemented on July 1, the effective date of the act. The bill was approved February 19, 1971. The public had knowledge that unless the bill was referred, it would be effective July 1. As in any budget matters, many items are taken into account which will arise in the future even though such times are not presently a part of the budget. By way of comparison, if the salary of the court reporters were increased as of July 1, the county commissioners would be required to take this into account even though such raise would not become effective until July 1.

It is therefore our opinion that there is justification for implementing the provisions of Senate Bill 2096, which amends Section 27-06-02, on July 1.

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Attorney General